IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION (L) NO. 1959 OF 2004

Skypak Services Specialists Ltd.... Petitioner

Vs.

Employees State Insurance Corporation and Ors ... Respondents

Mr. C.U. Singh i/by Sanjay Udeshi & Co. for Petitioner.

Mr. H.V. Mehta for Respondents.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 06, 2004

P.C. :

1. Rule. Heard forthwith.

2. The Petitioner by the present petition seek to impugn the order dated 10.6.2004 whereby the application made by the Respondent Corporation for verification has been allowed.

3. The contention on behalf of the Petitioner to the impugned order is that the Industrial Court had no jurisdiction to order reverification as the Corporation earlier on two occasions had done verification. Once verification was done, that

would be binding upon the Corporation and they cannot call on the Industrial Court to exercise jurisdiction in respect of the matter which was already subject matter of two verifications.

4. On the other hand on behalf of the Respondent Corporation, their learned counsel relying on the provisions of Section 75 and 78 of the ESI Act, contends that it is open to the court to exercise all such powers in the matter of section 78 of the Act. Therefore, it cannot be said that the exercise by the Industrial Court is without jurisdiction. It is further submitted that the respondent hereby had made an application. The Petitioner filed their reply opposing them said application. They were heard and only after that a speaking order has been passed and in these circumstances, this court should not exercise its extra ordinary jurisdiction in this case.

5. Having heard the learned counsel, in my; view even considering the contention on behalf of the Respondents that appeal is maintainable under Section 82 and without going into the issue whether in term the order can be subject matter of appeal under Section 82, for the reasons to be recorded,

the impugned order is liable to be set aside.

6. There is no dispute that earlier the respondent Corporation has carried out two verifications for the period in which they contend petitioners are liable. The application of 8.4.2004 discloses that the contention of respondent was that reverification report dated 6.8.1999 and 29.8.2000 were partly accepted bay the Corporation. Because all records were not produced at the time of the inspection. Therefore, the said reverification was incomplete. The question really is if this contention of the respondent that they had accepted the reports, then to atleast make known to the petitioner herein the orders whereby the report has ;been accepted or rejected so as to enable the petitioner herein to make out their case for the contention that no question arises for reverification as it their contention that two earlier reports were accepted by the respondent Corporation.

7. Considering the above, in my opinion, the petitioners did not have effective opportunity of meeting the case of the Respondents. The parties agree that the matter can be remanded back for

reconsideration on the issue of reverification that has been moved by the Respondent herein.

8. In the light of the above, the following order :

. The Respondent Corporation to make a fresh application disclosing the orders as to whether they have accepted the two verifications reports dated 16.8.1999 and 29.8.2000. It will be open to the petitioner to file their reply and for the Industrial Court to decide the matter afresh. All question of law are left open for consideration by the Industrial Court.

. The matter is remanded back to the Industrial Court for reconsideration in the light of the observations made above. It is made clear that it will be open to the industrial Court to decide the question on merits as this court has not decided the issue in controversy.

. Rule made absolute in terms of Prayer Clause (a).

. Personal Secretary to issue authenticated copy

of this order.

(F.I. REBELLO,J.)